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OCT 13 2004

In re Application of  
Burbank et al.  
Application No. 10/658,911  
Filed: September 10, 2003  
Attorney Docket No. R0367-01601

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed June 21, 2004, which is being treated as a petition under 37 CFR 1.53(e)(2), to establish that Figures 7 and 8 were part of the originally filed application.

The application was filed on September 10, 2003. On June 2, 2004, a Notice was mailed stating that Figures 7 and 8 described in the specification did not appear to be included as part of the application filed.

The present petition alleges that the missing Figures were deposited on September 10, 2003. In support, petitioner has submitted a postcard receipt which acknowledges receipt of 8 sheets of drawings on September 10, 2003.<sup>1</sup> Petitioner has also submitted a copy of the missing documentation- one drawing sheet including Figures 7 and 8.

The USPTO file for this application includes only 7 sheets of drawings and does not include a drawing sheet containing Figures 7 and 8 described in the specification. Based on the evidence submitted, the Office concludes the missing page was part of the application but was later misplaced. Therefore, the petition is **granted**.

The petition fee of \$130 will be credited back to petitioner's deposit account.

The Notice mailed September 10, 2003, was sent in error and is hereby vacated.

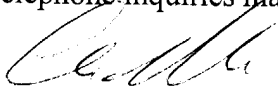
The drawings which have been submitted contain a header which includes a title, inventors, and a prior application number. The sheet containing Figures 7 and 8 was sent by facsimile transmission and it contains a date, time, phone number, etc. information as a result. The sheet containing the Figures is also of lesser quality than the other sheets. Petitioner *may* wish to file replacement sheets. *This paper* does not impose a requirement that new drawings sheets be submitted. A copy of the sheet containing Figures 7 and 8, as received by facsimile transmission, is attached.

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<sup>1</sup> Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 10, 2003, using the application papers filed on September 10, 2002, and the copy of drawing sheet six containing Figures 7 and 8 filed on September 7, 2003.

Telephone inquiries may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley  
Petitions Attorney  
Office of Petitions

Attached: Copy of drawing sheet submitted on September 7, 2003